
A BILL FOR AN ACT

RELATING TO MARKETPLACE FACILITATORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§237- Marketplace facilitators. (a) A marketplace
5 facilitator shall be deemed the seller of tangible personal
6 property, intangible property, or services and the seller on
7 whose behalf the sale is made shall be deemed to be making a
8 sale at wholesale pursuant to section 237-4.

9 (b) For purposes of section 237-3, a marketplace
10 facilitator's gross income or gross proceeds of sale include
11 receipts from sales on behalf of other sellers under subsection
12 (a).

13 (c) Any person other than a marketplace facilitator who
14 provides a forum, whether physical or electronic, in which
15 sellers list or advertise tangible personal property, intangible
16 property, or services for sale and takes or processes sales
17 orders shall:



- 1 (1) Post a conspicuous notice on its forum that informs
2 purchasers intending to purchase tangible personal
3 property, intangible property, or services for
4 delivery to or use at a location in this State that
5 the purchaser is required to pay use tax if the sale
6 is made from an unlicensed seller;
- 7 (2) Provide a written notice to each purchaser at the time
8 of each sale of tangible personal property, intangible
9 property, or services for delivery to or use at a
10 location in this State that the purchaser may be
11 required to remit use tax directly to the department
12 and provide instructions for obtaining additional
13 information from the department on whether and how to
14 remit use tax to the department; and
- 15 (3) No later than the twentieth day of the fourth month
16 following the close of the taxable year, submit a
17 report to the department that includes, with respect
18 to each purchaser of tangible personal property,
19 intangible property, or services delivered to or used
20 at a location in this State, all of the following:



- 1 (A) The purchaser's name, billing address, and
- 2 mailing address;
- 3 (B) If the sale involved the purchase of tangible
- 4 personal property, the address in this State to
- 5 which the tangible personal property was
- 6 delivered to the purchaser;
- 7 (C) The aggregate dollar amount of the purchaser's
- 8 purchases from the seller; and
- 9 (D) The name and address of the seller that made the
- 10 sale to the purchaser;

11 provided that the person, in lieu of complying with the notice
12 and reporting requirements in this subsection, may elect to be
13 deemed the seller of tangible personal property, intangible
14 property, or services as provided in subsection (a).

15 (d) Any person who fails to comply with subsection (c) and
16 has not elected to be deemed the seller of tangible personal
17 property, intangible property, or services unless it is shown
18 that the failure is due to reasonable cause and not due to
19 neglect, shall be assessed a penalty of \$1,000 if the failure is
20 for not more than one month, with an additional \$1,000 for each



1 additional month or fraction thereof during which the failure
2 continues, not exceeding \$12,000 in the aggregate."

3 SECTION 2. Section 237-1, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding a new definition to be appropriately inserted
6 and to read:

7 "Marketplace facilitator" means any person who sells or
8 assists in the sale of tangible personal property, intangible
9 property, or services on behalf of another seller by:

10 (1) Providing a forum, whether physical or electronic, in
11 which sellers list or advertise tangible personal
12 property, intangible property, or services for sale;
13 and

14 (2) Collecting payment from the purchaser, either directly
15 or indirectly through an agreement with a third
16 party."

17 2. By amending the definition of "representative" to read:

18 "Representative" means any salesperson, commission agent,
19 manufacturer's representative, broker or other person who is
20 authorized or employed by ~~[an-unlicensed]~~ a seller to assist
21 ~~[such]~~ the seller in selling property for use in the State, by



1 procuring orders for [~~such~~] the sales or otherwise, and who
2 carries on [~~such~~] those activities in the State, it being
3 immaterial whether [~~such~~] the activities are regular or
4 intermittent[~~, but the~~]. The term "representative" [~~does~~] shall
5 not include [a]:

6 (1) A manufacturer's representative whose functions are
7 wholly promotional and to act as liaison between an
8 unlicensed seller and a seller or sellers, and [~~which~~]
9 that do not include the procuring, soliciting or
10 accepting of orders for property or the making of
11 deliveries of property, or the collecting of payment
12 for deliveries of property, or the keeping of books of
13 account concerning property orders, deliveries or
14 collections transpiring between an unlicensed seller
15 and a seller or sellers[~~.—Any unlicensed seller who~~
16 ~~in person carries on any such activity in the State~~
17 ~~shall also be classed as a representative.~~]; and
18 (2) A marketplace facilitator."

19 SECTION 3. Section 238-1, Hawaii Revised Statutes, is
20 amended as follows:



1 1. By adding a new definition to be appropriately inserted
2 and to read:

3 "Marketplace facilitator" shall have the same meaning as
4 in section 237-1."

5 2. By amending the definition of "import" to read:

6 "Import" (or any nounal, verbal, adverbial, adjective, or
7 other equivalent of the term) includes:

8 (1) The importation into the State of property, services,
9 or contracting owned, purchased from an unlicensed
10 seller, or however acquired, from any other part of
11 the United States or its possessions or from any
12 foreign country, whether in interstate or foreign
13 commerce, or both; [~~and~~]

14 (2) The sale and delivery of property owned, purchased
15 from an unlicensed seller, or however acquired, by a
16 seller who is or should be licensed under the general
17 excise tax law from an out-of-state location to an in-
18 state purchaser, regardless of the free on board point
19 or the place where title to the property transfers to
20 the purchaser[~~-~~]; and



1 (3) The sale of tangible personal property, intangible
2 property, or services by a marketplace facilitator
3 with a valid license issued pursuant to section 237-9
4 on behalf of an unlicensed seller for delivery to or
5 use by a purchaser in the State."

6 SECTION 4. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 5. If any provision of this Act, or the
10 application thereof to any person or circumstance, is held
11 invalid, the invalidity does not affect other provisions or
12 applications of the Act that can be given effect without the
13 invalid provision or application, and to this end the provisions
14 of this Act are severable.

15 SECTION 6. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 7. This Act shall take effect on January 1, 2020.



Report Title:

General Excise Tax; Use Tax; Tangible Personal Property;
Intangible Property; Services; Marketplace Facilitators

Description:

Establishes marketplace facilitators as the sellers of tangible personal property, intangible property, or services. Requires other persons who provide a forum for listing of tangible personal property, intangible property, or services and the taking or processing of orders to report information about purchasers to the Department of Taxation. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

